

GOVERNMENT OF TELANGANA
ABSTRACT

Tribal Welfare Department - Revision Petition filed by Kshatriya Sadanam, Bhadrachalam represented by its present Secretary, P.Subba Raju, S/o. Late Venkata Rama Raju, Hyderabad against orders of the Additional Agent to Government, Bhadrachalam, in CMA No. 39/2013, dated 16.04.2021 and the Agency Divisional Officer, Bhadrachalam in LTR Case No. 4/BCM/2008, dated 15.03.2008 in respect of land admeasuring 0.76 cents in Sy.No. 121 situated in Bhadrachalam Town and Mandal, Bhadrachalam District - ALLOWED - Orders - Issued.

TRIBAL WELFARE (LTR) DEPARTMENT

G.O.Ms.No.58

Dated:07.10.2023.
Read the following:-

1. Revision Petition filed by Kshatriya Sadanam, Bhadrachalam represented by its present Secretary, P.Subba Raju, S/o. Late Venkata Rama Raju, Hyderabad, dated 21.05.2021.
2. Govt.Memo.No.691/TW.LTR/2021, dated 16.06.2021, 18.02.2023 and 05.09.2023.
3. From the Project Officer, ITDA, & Additional Agent to Government Bhadrachalam, letter Rc.No.A3/1768/2021,dated 09.02.2022.
4. Govt. Notice No.691/TW.LTR/2021, dated 05.09.2023.
5. Written arguments submitted by Counsel for the Revision Petitioner, dated 14.09.2023.

ORDER:-

In the reference 1st read above, Sri P.Subba Raju S/o late Venkata Rama Raju, R/o Flat No.403, M.Ranga Raju Residency, Yusufguda Main Road, Hyderabad, present Secretary of Kshatriya Sadanam, Bhadrachalam has filed the Revision Petition along with Affidavit and IA for grant of Stay before the Government on 21.05.2021 through their Counsel under Section 6 of the AP Scheduled Areas Land Transfer Regulation 1/1959 aggrieved by the orders of the Additional Agent to Government, Bhadrachalam, in CMA No. 39/2013, dated 16.04.2021 and the orders of the Agency Divisional Officer, Bhadrachalam in LTR Case No. 4/BCM/2008, dated 15.03.2008 in respect of land admeasuring 0.76 cents in Sy.No.121 situated in Bhadrachalam Town and Mandal, Bhadrachalam District, which is classified as the site and building in the premises of Kshatriya Sadanam urging the following grounds:

- i) The petitioner's Kshatriya Seva Sangham is a registered body bearing Regd.No.359/1990, managing choultry in the pilgrim centres at Srisailem, Bhadrachalam, Varanasi and presently constructing choultry at Shirdi for the benefit of pilgrims. The petitioner's Seva Sangham rendering services by providing accommodation and food to whoever visits the pilgrimages. Land to an extent of 0.76 cents situated in Sy.No.121 at Bhadrachalam village (Grama Kantam) is under the enjoyment and possession of late one Mr.Mothupalli Prasanna Raghava Rao, who is a philanthropist. He established Kasi Anna Purna Matham. After his death the house which was constructed there utilized by his sons who are unofficial respondents 3 to 17 for providing shelter and food for the pilgrims visiting famous temple at Bhadrachalam i.e. Seetharama Chandra Swamy Vari Devasthanam. All of them were died and widows settled at other places leaving Bhadrachalam. In these circumstances, maintenance of existing premises was handed over to the Kshatriya Seva Sangham, Budam Kshatriya Seva Sangham and they were authorized as Agent to look after the house premises for Annadanam Satram for charitable purpose under G.P.A.No.17/2000 dated 17.5.2000 in Sy.No.121 to an extent of 0.76 cents situated at Bhadrachalam Revenue village in Grama Kantam. Since the petitioner's Sangham already established countries for providing shelter and food to the pilgrims at Srisailem, Benaras and Shirdi started providing services even at Bhadrachalam. The petitioner's Sangham is acting as an agent to manage the affairs.

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- ii) While it being so, at the instance of Mr. Buddula Tirupathi Rao Dora, State Secretary, AP Adivasi Chaitanya Samithi, Alluri Seetharama Raju Colony, Bhadrachalam, LTR case No.4/BCM/2008 was registered on the file of Agency Divisional Officer and Sub Collector, Bhadrachalam. After receiving notices, they submitted Counter and Written arguments before the lower court. Without answering any of the contentions a non-speaking order was issued by the Agency Divisional Officer, Bhadrachalam on 15.3.2008. Against the same, CMA No.39/2013 was filed by the then Secretary of the Kshatriya Seva Sangham, viz., Sri Manthana Seetharama Raju being Secretary at that time. During the pendency of Appeal along with Stay Application when the Appellate Authority not considered the Stay Application, Writ Petition No.10879/2008 was filed and obtained Interim Directions dated 21.5.2008 for not dispossessing from the suit schedule land. Before Additional Agent to the Government they filed written arguments on 30.5.2015 raising various legal grounds. They have stated that in order to attract the provisions of APSALTR 1/59 and its Amendment 1/70 under Section 3 there should be transfer of immovable property by one non tribe to another non tribe under sale, lease or gift etc. They have stated that there is no transfer of immovable property in favour of Kshatriya Seva Sangham at any point of time. Seva Sangham is only working as Agent for administration of Choultry for rendering the services to pilgrims who visits Bhadrachalam Temple. It is also stated that initiation of LTR case itself is illegal, without power and jurisdiction. They have stated that this Court already considered the issue of administration of immovable property situated in scheduled area by another non tribe. Whether the same amounts to transfer under APSALTR 1/59 and its Amendment 1/70. The Hon'ble High Court considered the same issue in WP No.17153/2003 in its orders dated 19.7.2005 considering the meaning of the word transfer under section 5 of Transfer of Property and definition clause provided under section 2 (g) of Regulation 1/59 and its amendment 1/70 declared that administration and management of immovable property in the scheduled area by another non tribe cannot be treated as transfer. In the said case the Choultry viz., Amba Satram located at Bhadrachalam which got more than 4000 acres of land at Yellandu Taluk was handed over to Sringeri Mutt, Karnataka, for its management and administration by issuing G.O. by the Government. The said G.O. was challenged before the High Court. Single Judge declared the said arrangement cannot be treated as violation of Section 3 of Regulation 1/70. The same was confirmed by the Division Bench of Hon'ble High Court.
- iii) In view of the same orders passed by the Primary Authority and the orders passed by the 1st Appellate Authority are illegal and arbitrary.
- iv) Even otherwise the suit schedule property situated at Grama Kantam of Bhadrachalam Revenue Village, Grama Kantam cannot be treated as property of Government or Revenue Department. Grama Kantam is a place on which the village will be constructed and there cannot be any right conferred on the Government for registering LTR case. For all purposes initiating any LTR case not maintainable under law. There are judgements rendered by the High Court considering the nature of lands in Grama Kantam and the rights of Government over the Grama Kantam lands. Therefore, the question of interdicting the possession and enjoyment treating the land belong to Government does not arise.
- v) Without considering the points raised in the Written Arguments or grounds of Appeal, the orders of the Lower Court were confirmed by the appellate authority. Once the order of initial authority is perused absolutely there are no reasons considering the contentions. A Non Speaking Order was passed by primary authority. Similarly the orders of Appellate Authority are also equally suffers on the same grounds and accordingly both the orders are to be set aside. As per the settled law in **1986 SCC 2105,**

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2010 (5) SCC 161 the quasi-judicial authorities bound to pass reasoned order giving reasons dealing all the contentions raised. The same are lacking. Since the Kshatriya Seva Sangham is rendering services to the pilgrims from long years and in view of orders passed by both the authorities at any moment the authorities will take actions for ejection without even filing Execution Petition and in such an event the Seva Sangham will suffer irreparable losses and damages.

- vi) As per the law laid down by this Court an order of ejection is to be implemented only by filing Execution Petition under Rules but not otherwise. In the instant the Tahsildar was directed to evict without following any procedure and the same is illegal. **(2005 (5) ALD 126)**.
- vii) The orders were said to have been passed in CMA on 16.4.2021 and the same were communicated only on 5.5.2021 and from the said date revision lies to the Government within a period of 60 days and without waiting for the said period in view of the orders passed, the Tahsildar was directed to take over the immovable property under the cover of panchanama. Since the same is illegal without any authority under law and contrary to the judgements rendered by this Court this Revision is being filed along with Stay Application for setting aside orders of both the lower courts.
- viii) Both the lower authorities failed to appreciate the contention that the land is situated at Bhadrachalam Grama Kantam for which the State is not the owner particularly the Revenue Department or Tribal Welfare Department. Grama Kantam land is meant for construction of village and the persons who are having land and who possess houses in the Grama Kantam and continue their possession and the Government cannot have any right over such land.
- ix) When the property is situated in Grama Kantam at Bhadrachalam Revenue Village, the question of treating it as the property of Government and applying section 3 of Regulation 1/59 for passing the orders without there being any transfer of immovable property under section 3 of Regulation 1/70 is illegal and arbitrary.
- x) Both the lower authorities failed to appreciate the legal issue under APSALTR Rules 1969. After passing Ejection Orders the same is to be implemented only by filing Execution Petition in the High Court to consider the issue in detail and declare that any decree or orders of authorities under Regulation 1/70 are to be implemented like a civil court decree by filing Execution Petition. In the absence of the same issuing directions to the Tahsildar for conducting Panchanama for taking over the possession is totally an act of illegality and thereby the entire orders are to be declared as illegal and arbitrary.

2. Therefore, the Revision Petitioner prayed to suspend operation of the orders passed by the Additional Agent to the Government, Bhadrachalam in CMA No.39/2013, dated 16.4.2021 communicated on 5.5.2021 and the orders of the Agency Divisional Officer, Bhadrachalam in LTR case No.4/BCM/2008, dated 15.3.2008 pending disposal of the Revision and to pass such other order or orders as this Appellate Authority may deem fit and proper in the circumstances of the case.

3. In the reference 2nd read above, Government while admitting the above Revision Petition granted stay and also sent the copies of the revision petition to to all the respondents to file Counters/remarks and requested the lower and appellate authorities to submit para-wise remarks along with record.

4. In reference 3rd read above, the Additional Agent to Government, Bhadrachalam has furnished the parawise remarks along with connected case record.

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5. In reference 4th read above, Government have issued the notices to the concerned parties to attend the hearing on 14.09.2023 at 3.00 PM Petitioner Sri P.Subba Raju representing as Secretary of Kshatriya Sadanam, Bhadrachalam and his counsel called present. Counsel for Revision Petitioner filed Written Arguments reiterating some of the grounds urged in the Revision Petition – the gist of the arguments is as under:

- i) The owner and possessor Mothupalli Prasanna Raghava Rao constructed house over Gramakantam lands in S.No.115/20, 116/20, 117/20 at Bhadrachalam house assessment No.1507 in an area of 0.76 cents. The said house stands on the name of Raghava Rao in Gram Pachayat Records. In the year 13.07.1983 Gram Panchayat, Bhadrachalam issued certificate assessing the value of house at Rs.37,000/- and specified its boundaries. The certificate issued by Executive Officer, Gram Pachayat Bhadrachalam is filed.
- ii) For the fasli year 1387 (1978) Pahani the name of Raghava Rao was recorded and Land Revenue Receipt was issued by Revenue authorities. Copy filed.
- iii) For the year 1392 Fasli (1983) Revenue authorities CIST Receipts for the land for an extent of total 0.76 cents in old Sy.No.20/115 for ac.0.22 cents, Sy.No.20/116 ac.0.11 cents and Sy.No.20/117 for an extent of acs.0.42 cents. Copy filed.
- iv) While it being so, at the instance of Mr.Buddula Tirupathi Dora, State Secretary, A.P. Adivasi Chaitanya Samithi, Alluri Seetharama Raju Colony, Bhadrachalam, LTR case No.4/BCM/2008 was registered on the file of Agency Divisional Officer and Sub-Collector, Bhadrachalam. After receiving notices, Counter and Written arguments were submitted before the lower court. Without answering any of the contentions, a non-speaking order was issued by the Agency Divisional Officer, Bhadrachalam on 15.3.2008. Against the same, CMA No.39/2013 was filed by the then Secretary of the Kshatriya Seva Sangham viz., Sri Manthena Seetharama Raju being Secretary at that time. During the pendency of Appeal along with Stay Application when the Appellate Authority not considered the Stay Application, Writ Petition No.10879/2008 was filed and obtained Interim Directions dated 21.5.2008 for not dispossessing from the suit schedule land. Before Additional Agent to the Government, written arguments were filed on 30.5.2015 raising various legal grounds. It was submitted that in order to attract the provisions of APSALTR 1/59 and its Amendment 1/70 under Section 3, there should be transfer of immovable property by one non tribe to another non-tribe under sale, lease or gift etc. It was further submitted that there is no transfer of immovable property in favour of Kshatriya Seva Sangham at any point of time. Seva Sangham is only working as Agent for administration of Choultry for rendering the services to pilgrims who visits Bhadrachalam Temple. It was also stated that initiation of LTR case itself is illegal without power and jurisdiction. It was also submitted that this Court already considered the issue of administration of immovable property situated in scheduled area by another non tribe. Whether the same amounts to transfer under APSALTR 1/59 and its Amendment 1/70. The Hon'ble High Court considered the same issue in WP.No.17153/2003. In its orders dated 19.7.2005 considering the meaning of the word transfer under section 5 of Transfer of Property and definition clause provided under section 2 (g) of Regulation 1/59 and its amendment 1/70 declared that administration and management of immovable property in the scheduled area by another non tribe cannot be treated as transfer. In the said case the Choultry viz., Amba Satram located at Bhadrachalam which got more than 4000

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acres of land at Yellandu Taluk was handed over to Sringeri Mutt, Karnataka, for its management and administration by issuing G.O. by the Government, the said G.O. was challenged before the High Court. The Hon'ble Single Judge declared the said arrangement cannot be treated as violation of Section 3 of Regulation 1/70. The same was confirmed by the Division Bench of the Hon'ble High Court.

- v) Even otherwise the suit schedule property situated at Grama Kantam of Bhadrachalam Revenue village. Grama Kantam cannot be treated as property of Government or Revenue Department. Grama Kantam is a place on which the village will be constructed and there cannot be any right conferred on the Government for registering LTR case. For all purposes initiating any LTR case not maintainable under law. There are judgements rendered by the High Court considering the nature of lands in Grama Kantam and the rights of Government over the Grama Kantam lands. Therefore, the question of interdicting the possession and enjoyment treating the land belong to Government does not arise (copy enclosed).
- vi) In view of the law laid down by this court in W.P.17153/2003, dated 19.7.2005 r/w W.A.374/2006, dated 13.11.2014 since the G.P. executed is only to the extent of managing the affairs of the building without transferring the rights over the immovable property permanently or temporarily, the question of attracting provisions of Regulation 1/59 or its amendment 1/70 does not arise. In addition to the above, the orders passed by the primary authority and orders passed by the appellate authority are the non-speaking one without considering written arguments. As per the settled law in AIR 1986 SC 2105 and 2010 3 SCC 161 quasi-judicial authorities are bound to pass speaking orders considering all the submissions raised. As submitted both the orders lack the reasoning. Since the Kshatriya Sadanam is rendering services to the pilgrims for long years, it is the service rendered to the pilgrims and thereby any amount of confirmation of the orders passed by the lower authorities creates lot of troubles particularly when the GPA does not in any way contravene the provisions of Regulation 1/59 and its amendment 1/70 and accordingly this revision is to be allowed in request of the justice. Copies of judgments relied on are all filed along with Revision Petition.

6. Copies of the following documents are submitted along with the written arguments.

- i) Certificate dated 13.7.1983 issued by the Executive Officer, Gram Panchayat, Bhadrachalam – wherein it was certified as “This is to Certify that the House bearing No. – Assessment No.1507 situated at Bhadrachalam in Survey No.115/20, 116/20, 117/20 area 0.76 cents (Seventy Six cents), stands on the name of late Sri Mothupalli Prasanna Raghava Rao R/o Bhadrachalam of the value of the House Rs.37,000/- (Rupees Thirty seven thousand only). – Boundaries:
South: Panchayat Raoad,
North: Devasthanam Choultries,
East : I.V.Tatha Rao and Devasthanam Choultries
West : I.Narasimha Rao (Vijaya Engineering Works).”
- ii) Cist Receipt for Rs.7.94 ps issued in favour of Mothupalli Prasanna Raghava Rao -Fasli 1387 (year 1977).
- iii) Copy of Bhadrachalam Village Settlement Register No.69 (Bhadrachalam Taluq, Khammam District) wherein name of owner/pattedaris recorded as: Motupalli Prasanna Raghava Rao, Bhadrachalam in respect of Sy.Nos.20/115 (0.20 cents), Sy.No.20/116 (0.14 cents) and Sy.No.20/117 (0.42 cents) – total 0.76 cents.

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7. The Counsel for Revision Petitioner has submitted various citations/settled legal positions of the Hon'ble Apex Court and the Hon'ble High Court along with the Revision Petition and also with Written Arguments submitted on 14.9.2023 – relevant operative parts of the judgements are as extracted below:

- i) Writ Petition No.17153 of 2003, dated 19.7.2005 of the Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad – between: Vanam Hariprasad Rao S/o Jagannadha Rao, Sri Amba Satram, AP Endowments Department, Bhadrachalam, Khammam District (Petitioner) and 1) Government of AP rep by its Principal Secretary, Endowments 2) Commissioner (Endowments 3) Deputy Commissioner (Endowments) 4) Assistant Commissioner (Endowments) 5) Sri Sringeri Muth Sringeri, Karnataka State rep by its Administrator and 6) Amba Satram, Bhadrachalam, Khammam Districts rep by its Dharmadhikar (Respondents):

“Originally, by virtue of G.O.Ms.No.916, Revenue (Endts.II) Department, dated 06.11-1996, the Gazette Notification was issued, which reads as follows:

“In exercise of the powers conferred by Section 154 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987), the Governor of Andhra Pradesh hereby exempts Sri Amba Satram, Bhadrachalam, Khammam District, from the operation of the provisions of sections 15, 29, 57, 58, 65 and 145 of the said Act for a further period of 3 (three) years with effect from 09-01-1997, subject to allowing Sri Sringeri Mutt authorities to administer the said institution during the above period in accordance with the provisions of the Act 30/87.”

A perusal of the above notification shows that initially for a period of three years, the 5th respondent was given authorization to administer the Amba Satram and no challenge was made when it was issued. But, again the Government by G.O.Ms.No.1062, dated 18-12-1997 issued the following notification:

“In exercise of the powers conferred by section 154 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments hereby exempts Sri Amba Satram, Bhadrachalam, Khammam District, from the operation of the provisions of Sections 15, 28, 57, 58, 65 and 145 of the Endowments Act permanently, subject to allowing Sri Sringeri Math authorities to administer the said institution permanently in accordance with the provisions of the Act 30/87.”

A perusal of the above notification shows that the Amba Satram was handed over to the fifth respondent to administer the institution permanently. There is no dispute that the fifth respondent is a non-tribal religious institution. Even when this notification was issued in the year 1997, the petitioner has not raised his little finger till his suspension was ordered by the Dharmadhikari. After a lapse of six years and that too after passing the suspension order by the Dharmadhikari, the issue has been raised.

“Now the question is as to whether the impugned proceedings can be termed as a transfer of property within the meaning of Section 3 of the Regulation 70?

The “Transfer of Property” is defined under Section 5 of the Transfer of Property Act which means an act by which a living person conveys property in present or in future, to one or more other living

persons, or to himself and one or more other living persons, and to "transfer property" is to perform such act. The word 'conveys' is used in a wide sense so as to include sale, mortgage, charge, lease etc.

In the impugned proceedings, nowhere it is stated that the transfer of lands situated in the agency area have been transferred to the fifth respondent-institution either by way of mortgage, lease, sale, gift, exchange or other dealing. But, the Notification only gives permission to the fifth respondent to administer the Amba Satram permanently. The administration is entirely different from transfer.

In my considered opinion, the word "Administration" does not come within the meaning of the word "other dealing" as expressed in Section 2(g) of the Regulation 70. Though the Amba Satram may be having immovable properties in the tribal area, they are being looked after by the management of the Amba Satram, which is a non-tribal institution. Though the impugned order does not directly indicate about the transfer of immovable property, but it only authorizes the fifth respondent to manage the affairs of Amba Satram.

Since the land in the scheduled area belongs to the choultry, the immovable properties of the Amba Satram, if any, are continued to be under the ownership of choultry. In the impugned Government Order, only the administration was transferred. Therefore, in my considered opinion, the administration of the Sri Sringeri Muth has only been transferred to the fifth respondent. Hence, it is not a transfer, as such, transferring the immovable properties from a scheduled area to a non-tribal. The regulation only prohibits the transfer of immovable property in favour of non-tribal in any other form. Therefore, the impugned proceedings does not come within the purview of Section 3 of the Regulation 70 and it is completely in accordance with law and therefore, the same cannot be quashed as illegal and arbitrary and without jurisdiction.

For the aforesaid reasons, the writ petition is devoid of merit and accordingly the same is dismissed.

The interim order dated 28-12-2004 passed by this Court in W.P.M.P.No.21303 of 2003 is vacated."

- ii) Writ Appeal No.374 of 2006, dated 13.11.2014 (against above judgement in WP No.17153 of 2003, dated 19.7.2005) (L.Narasimha Reddy, J &Challa Kodanda Ram.J)

The unsuccessful petitioner in WP No.17153 of 2003 is the appellant.

The appellant was placed under suspension by the administration of the 6th respondent on 26.05.2003 on the allegation of misconduct. Thereafter, he was removed from service on 10.06.2003. The appellant filed the writ petition challenging G.O.Ms.No.1062, dated 18.12.1997 as being illegal, arbitrary, without jurisdiction and contrary to the Act as well as the A.P. Scheduled Areas Land Transfer Regulations, 1959 as amended by Regulation 1 of 1970 (for short 'the Regulation') and the judgement of the Supreme Court in Samatha Vs. State of A.P. and others. The writ petition was opposed by the respondents. Learned Single Judge dismissed the writ petition through a detailed judgement dated 19.07.2005. Hence, this writ appeal.

A serious doubt arises as to whether the appellant has locus standi to challenge the G.O. at all. The occasion for him to institute

proceedings was that he was placed under suspension by the 6th respondent, after he was placed under the administration of Sringeri Muth. When a larger issue as to the very exemption of the institution from the provision of the Act is involved, it is only the person, who has got immediate concern, that can challenge the steps. The grievance of the appellant was mostly about the disciplinary proceedings initiated against him.

It is brought to our notice that challenging the order of removal, dated 10.06.2003, W.P.No.27409 of 2006 was filed and that the same is pending. Be that as it may, the very ground of challenge to G.O.Ms.No.1062 is that it is violative of the Regulation. The Regulation prohibits transfer of immovable property situated in scheduled area in favour of non-tribals.

The expression "transfer" is defined under the Regulation in wider terms; compared to the definition of "categories of transfer" under the Transfer of Property Act. The word "transfer", is defined under Section 2 (g) of the Regulation as under:

"Transfer" means mortgage with or without possession lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing."

Assuming that not only the act of transfer as commonly known, but also taking the control of the property, constitutes transfer, it is just un-understandable as to how the G.O. is contrary to Regulation. It is not the case of the appellant that the 6th respondent possessed certain extent of immovable property in scheduled area and that the same has been transferred to some other individual or organization. Except that, the provisions of the Act were made inapplicable to the 6th respondent, not a word was said about the relationship between the 6th respondent-institution, or the properties held by it.

Learned Single Judge has undertaken extensive discussion not only with reference to the relevant provisions of law but also the judgment of the Supreme Court and expressed the view that no act of transfer, as contemplated under the Regulation, has taken place on account of the issuance of the G.O. We are in total agreement with the learned Single Judge.

We therefore dismiss the writ appeal.

The miscellaneous petition filed in this writ appeal shall also stand disposed of. There shall be no order as to costs."

iii) AIR 1986 Supreme Court 2105 (From: Bombay) A.P.SEN AND B.C.RAY, JJ. – Civil Appeal No.1442 of 1986 (arising out of S.L.P. (Civil) No.885 of 1985), dated 5.8.1986 – VasudeoVishwanathSaraf, Appellant v. New Education Institute and others, Respondents:

"Constitution of India, Art.226 – Speaking order – Necessity to pass – Order should record in nutshell relevant reasons for dismissal of petition."

"What is imperative is that the order must in a nutshell record the relevant reasons which were taken into consideration by the Court in coming to its final conclusions and in disposing of the petition or the cause by making the order."

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- iv) 2005 (5) ALD 126 – IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD – C.Y.SOMAYAJULU, J. First Day of April, 2005 – WP No.12960 of 2003 – Mamillapalli Chinakoteswara Rao and others v. Mandal Revenue Officer, Buttaqudem Mandal, W.G.District and others:

AGENCY LAWS – Restoration of possession – Order for – Passed by Agent or Agency Divisional Officer or other Officer – Has to be executed like a decree of ejectment

EXECUTION – Decree for eviction – Passed two years before filing of EP – Judgement debtor, entitled to notice – Civil Procedure Code, 1908, Order 21 Rule 22.

Civil Procedure Code 1908 – Order 21 Rule 22 – Execution of decree – Before executing decree for eviction passed two years before filing of EP, judgement debtor is entitled to notice under Rule 22 of Order 21 CPC.

- v) WP.No.9093/2015, dated 02.04.2015 – Hon'ble High Court of AP.

"It is contended that, in relation to buildings, specific provision is made under section 18 of Act XXVI of 1948 and that, consequently, unless a house-site can be brought within the ambit of section 18, such house-site should be held to be property as to which title gets transferred to the Government under section 3 (b). Section 18 deals, in my opinion, with building wherever they may be situated, whether in the gramanathams, or in ryoti lands or pannai lands or waste lands. Section 18 has no particular application to buildings or house-sites in a gramanatham (or village habitation) is protected from transfer of title to the Government both under section 18 (1) of Madras Act XXVI of 1948 and under the Madras Land Encroachment Act (III of 1905). The title to a house site in a gramanatham is protected from transfer to Government by the operation of Madras Act III of 1905.

Therefore, occupied Gramakantam by its nature or classification does not belong to the Government to include the Gramakantam in the prohibitory list. Either under the Madras Estate Land Act or in the Estates (Abolition and Conversion into Ryotwari) Act exceptions have been carved out and Gramakantam is one of the categories of land which is not included in the Government lands. This Court is of the opinion that refusing to entertain document for registration on the ground that the subject property is classified as Gramakantam amounts to illegal refusal and consequently the writ petition is ordered by directing the Sub-Registrar/2nd respondent to receive the document presented by the petitioner for registration of subject property without reference to the classification of petition land as Gramakantam, consider the same and pass orders for registration, if the document is otherwise compliant. No order as to costs."

8. Perused the record.

9. Initially, the LTR case No.4/BCM/2008 was registered by the Agency Divisional Officer & Sub-Collector, Bhadrachalam on the petition of one Buddula Tirupathirao Dora, State Secretary, Andhra Pradesh Adivasi Chaitanya Samithi, Alluri Seetharamaraju Colony, Bhadrachalam, against Kshatriya Sadanam represented by its Secretary, Kshatriya Seva Sangham, Buddaram, Guntur District

(Manthena Sitarama Raju as purchaser) and 16 others who are all residing in different places in the State – wherein it was noticed that a transfer was took place with respect to the suit property admeasuring acs.0.76 cents situated in Sy.No.121 of Bhadrachalam village and Mandal, Khammam District.

10. The Agency Divisional Officer, Bhadrachalam had taken up enquiry conducting hearings and disposed the case on 15.3.2008 with the following findings:

- i) The Respondent No.2 viz., Sri P.Krishna Kumar S/o Sitharama Rao, Advocate, Bhadrachalam (mentioned as Seller) filed his explanation stating that he is nothing to do with the schedule land and that he has not sold the same to the 1st respondent viz., Manthena Sitarama Raju (mentioned as Purchaser) Secretary of Kshatriya Sadanam, Bhadrachalam.
- ii) The Respondent No.1 (Secretary of Kshatriya Sadanam) appeared through his Counsel Godaparthi Nagaraju and filed explanation and written arguments contending that he is only power of attorney holder of the Respondents 2 to 17 and that he is looking after the affairs of the schedule property which is a charitable institution, and that there is no transfer of the schedule property and requested to drop all further proceedings.
- iii) It is admitted by the Respondent No.1 that he is in possession of the schedule property but not by means of any transfer and that he is only a Power Attorney Holder of the respondents 3 to 17. He is not placed any document establishing that establishing that the respondents 3 to 17 are title holders of the schedule property and further when he is acting as the Agent of the respondents 3 to 17 he ought to have performed all the duties lawfully and in the name of the respondents 3 to 17 on their behalf. But the 1st respondent not placed any evidence such as construction permission of the buildings, electricity bills etc., showing that they stand in the name of the respondents 3 to 17 represented by the 1st respondent as their General Power of Attorney Holder and on the other hand they constructed the building in the name of "Kshatriya Sadanam" which belongs to a particular non-tribal community. Therefore, the contention of the 1st respondent that he is acting as mere agent of the respondents 3 to 17 is not accepted. Further as per the report of the Tahsildar, Bhadrachalam, the respondents 3 to 17 are not having any title over the schedule property. The contents of the report of the Tahsildar, Bhadrachalam are not objected by the respondents or their counsel. Therefore, in the absence of valid title, the respondents 3 to 17 cannot execute power of attorney in respect of immovable property situated in the Scheduled Area and on the strength of which the 1st respondent cannot deal with the property.
- iv) As per Section 3 (1) (b) of the Regulation 1/1959, the burden to prove that the schedule property is not transferred from any member of Scheduled Tribe lies on the respondents but the respondents utterly failed to rebut the said presumption clause, and therefore this Court presumes that that the respondents acquired the schedule property under a transfer from a Tribal subsequent to the commencement of the provisions of Regulation 1/1959 and subsequently transferred the same in favour of the 1st respondent for purpose of running the Community centre in the name as "Kshatriya Sadanam" and to avoid the purview of the provisions of AP (SA) LT Regulation 1/1959 as amended by Regulation 1/1970, the General Power of Attorney deed was brought into existence, which will attract the expression "other dealing with the immovable property" as mentioned in Sec.2(g) of the Regulation 1/1959, which amounts to Transfer.

- v) Therefore, ordered for decree and ejectment of all the respondents from the schedule land consisting of the structures & buildings raised by the 1st respondent as Secretary of Kshatriya Seva Sangh at Bhadrachalam town and Mandal, Khammam District, which was acquired from the respondents 3 to 17 from a tribal transferor in violation of the provisions of Regulation 1/1959 and its amended Regulation 1/1970 and that the schedule property to be taken into Government custody for assigning the same to eligible tribals as per law in force.

11. Aggrieved by the above orders of the Agency Divisional Officer & Sub-Collector, Bhadrachalam dated 15.03.2008, Sri Manthena Seetharama Raju representing as Secretary of Kshatriya Sadanam, Bhadrachalam had filed the Statutory Appeal before the Additional Agent to Government, Bhadrachalam which was numbered as CMA No.39/2013 and dismissed on 16.4.2021 for the following reasons:

- The contention of the Appellant is that he is neither owner nor in possession of the schedule property in his individual capacity or claiming any right title or interest whatsoever the same. The said property is in Bhadrachalam Town owned by Motupalli Prasanna (Late) Raghavarao, who was a philanthropist established Kasi Annapurna Matam and after his death the schedule house was being utilized by his sons for providing shelter and food for the pilgrims visiting this famous temple town of Bhadrachalam. The maintenance of this property was handed over to this appellant as authorized agent to look after and used premises of choultry under general power of authority dated 17.05.2000 in Sy.No.121 extent of 0.76 cents, situated at Bhadrachalam Looking after management/administration over immovable properties by its owners/possessors through their agents/servants etc. is nothing, but mere delegation/entrustment did not come under the definition "Transfer" as laid down in section 2 (d) of the Regulation or any other provision of law for time being in force. The authority has no cause of action. The appellant herein not filed any documents right title over the scheduled land except the copy of lower court order and copy of General Power of Attorney given by the Respondents herein.
- As seen from the lower court orders, the petitioners (Respondent No.1 herein) contention is that the schedule property was purchased by the 1st respondent (Appellant herein) from the 2nd respondent (2nd Respondent herein) and constructed Kshatriya Sadanam. The Tahsildar, Bhadrachalam identified the land measuring extent acs.0.76 cts in RS No.121 which is recorded in the revenue records as Gramakantam and that respondents 3 to 17 (Respondent Nos.3 to 17 herein) have given General power of attorney to the 1st respondent (appellant herein) and that they have no proof their of their title over the land. The respondent No.2 (Respondent No.2 herein) filed his explanation stating that he is nothing to do with the schedule land and that he has not sold the same to the 1st respondent (Appellant herein).
- The word "Transfer" under LTR means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property and includes charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing U/s 2 (g) of Regulation. Hence, the contention of the appellant that the case did not come under the definition "Transfer" is not correct.
- In view of the above, the court is of view that neither the appellant nor the respondents 3 to 17 are having any valid record/title over the suit land. The case is attracted with the provisions made under AP (SA) LTR 1/59 as amended by Regulation 1/70 and I see no reasons to interfere with the lower court orders.

(Contd...12)

- Appeal dismissed, lower court order is confirmed.
- The Tahsildar, Bhadrachalam is directed to take over the immovable property described below into Government custody evicting the persons who is in possession under cover of panchanama and kept the same reserved for future purposes of Government etc.

12. Upon perusal of the evidences available on the record of Additional Agent to Government, Bhadrachalam in CMA No.39/2013 and in view of the contentions/arguments advanced by the Counsel for Revision Petitioner supported by documentary evidences and fortified with the settled legal positions of the Hon'ble High Court and the Hon'ble Apex Court, now the below points that arise for adjudication before the Revisional Authority i.e. Government are:

- i) **Whether the land under dispute i.e. 0.76 cents situated in Bhadrachalam Town and Mandal of Bhadrachalam District is Gramakantam land or belongs to Sri Mothupalli Prasanna Raghava Rao?**
- ii) **Whether the appointment of General Power of Attorneys by the family members of Sri Mothupalli Prasanna Raghava Rao authorizing for management of land admeasuring acs 0.76 cents in Bhadrachalam Town without transfer of property contravenes provisions of the Regulation I of 1959 and its Amendment I of 1970?**

13. Findings

For (i)—On perusal of the lower court order dated 15.3.2008 in LTR case No.4/BCM/2008 of the Agency Divisional Officer, Bhadrachalam it was mentioned as "On perusal of the said petition of the petitioner, this Court directed the Tahsildar, Bhadrachalam to submit his report. The Tahsildar, Bhadrachalam has identified the land that it is measuring Acs.0.76 cents in R.S.No.121, which is recorded in the revenue records as Gramakantam and that the Respondents 3 to 17 (i.e. family members of Sri Mothupalli Prasanna Raghava Rao) have given Registered General Power of Attorney to the 1st respondent viz., Sri Manthena Sitarama Raju, then Secretary of the Kshatriya Sadanam and that they have no proof their title over the land.

In support of contention of the Revision Petitioner that the land originally belongs to Sri Mothupalli Prasanna Raghava Rao and that they have been given General Power of Attorney to look after its management and other affairs, the Revision Petitioner has filed copies of documents i.e. 1) Certificate dated 13.7.1983 issued by the Executive Officer, Gram Panchayat, Bhadrachalam certifying that the house situated in Sy.Nos.115/20, 116/20, 117/20 admeasuring 0.76 cents (Seventy Six cents) stands on the name of Sri Mothupalli Prasanna Raghava Rao is valued at Rs.37,000/- vide Assessment No.1507; 2) Cist Receipt for Rs.7.94 ps issued in favour of land owner Sri Mothupalli Prasanna Raghava Rao in Fasli 1387 (year 1977); and 3) Copy of Bhadrachalam Village Settlement Register No.69 (Bhadrachalam Taluq, Khammam District) wherein name of owner/pattedar is recorded as: Mothupalli Prasanna Raghava Rao, Bhadrachalam in respect of land admeasuring 0.76 cents i.e. 1) in Sy.No.20/115 (0.20 cents); 2) in Sy.No.20/116 (0.14 cents); and 3) in Sy.No.20/117 (0.42 cents) – total 0.76 cents.

The above evidences amply establish that Sri Mothupalli Prasanna Raghava Rao and their family members are the real owners of the land admeasuring acs.0.76 cents situated in the above (3) survey numbers as recorded in the Settlement Register No.69 of Bhadrachalam village and Taluq of Khammam District.

The Bhadrachalam village and Taluq were previously in East Godavari District and were under Madras Province.

(Contd...13)

Even if the contention of the official respondents that it is Grama Kantam land, as per the settled legal position of the Hon'ble High Court of Andhra Pradesh in WP No.9093 of 2015, dated 02.04.2015 held that the title to a house site in a gramamatham (gramakantam) is protected from transfer to Government by the operation of Madras Act III of 1905. Therefore, occupied Gramakantam by its nature or classification does not belong to the Government to include the Gramakantam in the prohibitory list. Either under the Madras Estate Land Act or in the Estates (Abolition and Conversion into Ryotwari) Act exceptions have been carved out and Gramakantam is one of the categories of land which is not included in the Government lands.

Thus, in view of the above findings supported by legitimate evidences and legal position, the owner of the land of 0.76 cents under dispute is Sri Mothupalli Prasanna Raghava Rao and his legal heirs.

For (ii)—As per the Revision Petitioner, the Kshatriya Seva Sangham is a registered body bearing Regn.No.359/1990 managing choultries in the pilgrim centers at Srisailam, Bhadrachalam, Varanasi etc. rendering services by providing accommodation and food to whoever visits the pilgrimages. The land under dispute at Bhadrachalam village i.e. 0.76 cents situated in Sy.No. 121 belongs to one Sri Mothupalli Prasanna Raghava Rao (late) who was a philanthropist. He established Kasi Annapurna Matham. After his death, the house which was constructed there, utilized by his sons who are unofficial respondents 3 to 17 for providing shelter and food for the pilgrims visiting famous temple at Bhadrachalam i.e. Sri Seetha Ramachandra Swamy Vari Devasthanam. All of them were died and widows settled at other places leaving Bhadrachalam. In these circumstances, maintenance of existing premises was handed over to the Kshatriya Seva Sangham, Budam Kshatriya Seva Sangham and they were authorized as Agent to look after the house premises for Annadanam Satram for charitable purpose under GPA No.17/2000 dated 17.5.2000 in Sy.No.1212 to an extent of 0.76. Thus, the petitioner's Sangham is acting as an Agent to manage the affairs the said house which stands on the name of Raghava Rao.

The Revision Petitioner further submitted that there is no transfer of immovable property in favour of Kshatriya Seva Sangham at any point of time and it is only working as an Agent for administration of Choultry for rendering services to the pilgrims visiting the Bhadrachalam Temple. Therefore, in view of the settled legal position of the Hon'ble High Court in WP No.17153/2003, dated 19.7.2005 and as upheld in Writ Appeal No.374/2006, dated 13.11.2014, the Revision Petitioner contended that the General Power of Attorney executed is only to the extent of managing affairs of the building without transferring the rights over the immovable property permanently or temporarily, the question of attracting provisions of the Regulation I of 1959 or its amendment 1/70 does not arise.

Perused the judgements of the Hon'ble High Court in WP No.17153 of 2003, dated 19.7.2005 and Writ Appeal No.374/2006, dated 13.11.2014 – between Vanam Hariprasad Rao S/o Jagannadha Rao, Sri Amba Satram (Petitioner) and 1) Government of Andhra Pradesh represented by its Principal Secretary, Endowments, 2) Commissioner (Endowments) 3) Deputy Commissioner (Endowments) 4) Assistant Commissioner (Endowments) 5) Sri Sringeri Muth Sringeri, Karnataka State rep by its Administrator and 6) Amba Satram, Bhadrachalam, Khammam Districts rep by its Dharmadhikar (Respondents).

The issue in the present Revision Petition is identical to the issue settled by the Hon'ble High Court in the above Writ Petition and Writ Appeal wherein it is held that:

The "Transfer of Property" is defined under Section 5 of the Transfer of Property Act which means an act by which a living person conveys property in present or in future, to one or more other living persons, or to himself and one

(Contd...14)

or more other living persons, and to "transfer property" is to perform such act. The word 'conveys' is used in a wide sense so as to include sale, mortgage, charge, lease etc.

In the impugned proceedings, nowhere it is stated that the transfer of lands situated in the agency area have been transferred to the fifth respondent-institution either by way of mortgage, lease, sale, gift, exchange or other dealing. But, the Notification only gives permission to the fifth respondent to administer the Amba Satram permanently. The administration is entirely different from transfer.

In my considered opinion, the word "Administration" does not come within the meaning of the word "other dealing" as expressed in Section 2(g) of the Regulation 70. Though the Amba Satram may be having immovable properties in the tribal area, they are being looked after by the management of the Amba Satram, which is a non-tribal institution. Though the impugned order does not directly indicate about the transfer of immovable property, but it only authorizes the fifth respondent to manage the affairs of Amba Satram.

Since the land in the scheduled area belongs to the choultry, the immovable properties of the Amba Satram, if any, are continued to be under the ownership of choultry. In the impugned Government Order, only the administration was transferred. Therefore, in my considered opinion, the administration of the Sri Sringeri Muth has only been transferred to the fifth respondent. Hence, it is not a transfer, as such, transferring the immovable properties from a scheduled area to a non-tribal. The regulation only prohibits the transfer of immovable property in favour of non-tribal in any other form. Therefore, the impugned proceedings does not come within the purview of Section 3 of the Regulation 70 and it is completely in accordance with law and therefore, the same cannot be quashed as illegal and arbitrary and without jurisdiction.

The Hon'ble High Court in the Writ Appeal No.374 of 2006, dated 13.11.2004 held that the expression "transfer" is defined under the Regulation in wider terms; compared to the definition of "categories of transfer" under the Transfer of Property Act. The word "transfer", is defined under Section 2 (g) of the Regulation as under:

"Transfer" means mortgage with or without possession lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing."

Assuming that not only the act of transfer as commonly known, but also taking the control of the property, constitutes transfer, it is just understandable as to how the G.O. is contrary to Regulation. It is not the case of the appellant that the 6th respondent possessed certain extent of immovable property in scheduled area and that the same has been transferred to some other individual or organization. Except that, the provisions of the Act were made inapplicable to the 6th respondent, not a word was said about the relationship between the 6th respondent-institution, or the properties held by it.

Learned Single Judge has undertaken extensive discussion not only with reference to the relevant provisions of law but also the judgement of the Supreme Court and expressed the view that no act of transfer, as contemplated under the Regulation, has taken place on account of the issuance of the G.O. We are in total agreement with the learned Single Judge.

We therefore dismiss the writ appeal."

(Contd...15)

14. Government, after careful examination of the matter and in view of the above findings, hereby ALLOW the revision petition filed by Kshatriya Sadanam, Bhadrachalam represented by its present Secretary, P.Subba Raju, S/o. Late Venkata Rama Raju, Hyderabad duly setting aside orders of the Additional Agent to Government, Bhadrachalam, in CMA No. 39/2013, dated 16.04.2021 and the orders of the Agency Divisional Officer, Bhadrachalam in LTR Case No.4/BCM/2008, dated 15.03.2008 in respect of the land admeasuring 0.76 cents situated in Sy.No.171 which is classified as the site and building in the premises of Kshatriya Sadanam under the management of its present Secretary Sri P.Subba Raju S/o late Venkata Rama Raju (previously under the management of Sri Manthana Seetharama Raju, Secretary).

15. The Additional Agent to Government & Project Officer, ITDA, Bhadrachalam, Bhadradi Kothagudem District shall take necessary further action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

Dr.CHRISTINA Z.CHONGTHU,
SECRETARY TO GOVERNMENT.

To

The Additional Agent to Government & Project Officer, ITDA, Bhadrachalam,
Bhadradi Kothagudem District (By RPAD)

The Agency Divisional Officer, Bhadrachalam,
Bhadradi Kothagudem District. (By RPAD)

Kshatriya Sadanam, Bhadrachalam, Rep. by its present Secretary,
P.Subba Raju, S/o. Late Venkata Rama Raju,
Presently residing at Flat No. 403, M.Ranga Raju Residency,
Yusufguda Main Road, Hyderabad (By RPAD)

Sri Buddula Tirupathi Rao Dora, State Secretary,
Andhra Pradesh Adivasi Chaitanya Samithi,
Alluri Seetharamaraju Colony, Bhadrachalam Town and Mandal,
Bhadradi Kothagudem District.

Sri P. Krishna Kumar, S/o. Late Sitharama Rao, Advocate,
Bhadrachalam, Bhadradi Kothagudem District.

Smt.Motupalli Parijatham, W/o.Late Sitharama Rao,
R/o.Madanapalli, Chittoor District.

Smt.Motupalli Syamala, W/o.Late Rama Krishna,
R/o.Machilapatnam, Krishna District.

Smt.Motupalli Susheela Devi, W/o.Late Sitharama Rao,
R/o.Manuguru, Khammam District.

Sri Mothupalli Prasanna Raghava Rao, S/o.Late Sitharama Rao,
R/o.Manuguru, Khammam District.

Smt.Motupalli Susheela Devi, W/o.Late Raghurama Rao,
R/o.GodavariKhani, Karimnagar District.

Sri Motupalli Madava Mohan, S/o.Late Raghurama Rao,
R/o.GodavariKhani, Karimnagar District.

Sri Motupalli Prasanna Kumar, S/o.Late Raghurama Rao,
R/o.Kothagudem, Khammam District.

Smt.Motupalli Lakshmi Devi, W/o.Late Satyanarayana Rao,
R/o.Bhadrachalam, Khammam district.

Sri Motupalli Prasanna Raghava Rao, S/o.Late Satyanarayana Rao,
R/o.University Road, Pune, Maharashtra.

Sri Motupalli Saibaba, S/o.Late Satyanarayana Rao,
R/o.Koratapadu of Gunturu District.

Sri Motupalli Ramesh Babu, S/o.Late Satyanarayana Rao,
R/o.Sanatnagar, Hyderabad.

Sri Motupalli Srinivasa Rao, S/o.Late Satyanarayana Rao,
R/o.Bhadrachalam, Khammam District.

Smt.Motupalli Sithamahalakshmi, W/o.Late Raghavendra Rao,
R/o.Bonthapalli, Hyderabad.

Sri Motupalli Prasanna Kumar,
S/o.Late Raghavendra Rao, R/o. N.T.Quarters, Rayabareli, U.P.

(Contd...16)

Sri Moutpalli Ramprasad, S/o.Raghavendra Rao,
R/o.Bonthapalli, Hyderabad (Sellers)
The Tahsildar, Bhadrachalam Mandal, Bhadradri Kothagudem District. (By RPAD)
(With a direction to serve copy of the GO to unofficial respondents)

Copy to:-

The District Collector, Bhadradri Kothagudem District.
M/s P.V.Ramana, B.Sravan Kumar, Advocates, Flat No.1,
Banjara Sangeet Apartment, Kapadiya Lane,
Hyderabad – 500082 (By RPAD)
The P.S to Hon'ble Minister (STW)
The P.A to Secretary (TW)
The P.A to Special Secretary (TW).
SC/SF.

//FORWARDED::BY ORDER//

SECTION OFFICER.